

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

OFFICER JOHN DOE and ROBERT)
LAUER, CANDIDATE FOR NEVADA)
SECRETARY OF STATE,)

Plaintiffs,)

vs.)

NEVADA SECRETARY OF STATE)
ROSS MILLER and THE STATE OF)
NEVADA,)

Defendants.)

Case No.: 2:10-cv-01753-GMN-LRL

ORDER

Before the Court are Plaintiffs' three (3) motions: Motion for Hearing and Limiting Notice on Emergency Motion (ECF No. 2), Motion for Order Shortening Time (ECF No. 3), Emergency Motion to Shorten Time (ECF No. 8), as well as Defendant Ross Miller's Response (ECF No. 13) and Motion to Dismiss (ECF No. 14).

Plaintiffs Robert Lauer and Officer John Doe filed this lawsuit alleging that the State of Nevada and its Secretary of State, Ross Miller, have violated the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") and that because of this, American military service members and overseas voters will not be able to vote in the November 2, 2010 election unless this Court provides relief. As Plaintiffs note in the caption of the case, Plaintiff Lauer is a candidate for Nevada Secretary of State. Defendant Miller is the incumbent Lauer is challenging in the November 2, 2010 election. Plaintiff Doe is allegedly an officer in the Nevada National Guard currently on active duty in Iraq. (Compl. 2 ¶ 5, ECF No. 1.)

1 As will be discussed below, the Court, upon its independent consideration of the
2 facts before it, finds that this case is moot because the Defendants have already provided
3 a satisfactory remedy for the violations of UOCAVA alleged by Plaintiffs. Accordingly,
4 Plaintiffs' Complaint (ECF No. 1) is DISMISSED, Defendants' Motion to Dismiss (ECF
5 No. 14) is DENIED as moot, and Plaintiffs' motions (ECF Nos. 2, 3, & 8) are DENIED
6 as moot.

7 **I. BACKGROUND**

8 The State of Nevada is the legal voting residence of many men and women in the
9 United States Armed Forces who are physically absent from this country while serving
10 overseas. Nevada is also the legal voting residence of numerous other non-military U.S.
11 citizens who are currently located outside our country's borders. As these voters are
12 unable to vote in person in Nevada, they must cast absentee ballots in order to exercise
13 their right to vote. To protect this right to vote in federal elections, Congress passed the
14 Uniformed and Overseas Citizens Absentee Voting Act, which preserves the federal
15 voting rights of certain United States citizens formerly residing in the country but who
16 now reside outside the United States. *See* 42 U.S.C. § 1973ff-1, *et seq.* Specifically,
17 UOCAVA provides that certain military voters and certain overseas voters shall be
18 permitted by each state "to use absentee registration procedures and to vote by absentee
19 ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. §
20 1973ff-1(a)(1).

21 UOCAVA was recently amended by the Military and Overseas Voter
22 Empowerment Act of 2009, which created additional protections for members of the
23 military, their families, and other overseas voters. Among these new protections is the
24 requirement that states must mail absentee ballots to military and overseas voters no later
25 than forty-five (45) days before an election, if those voters requested the ballots forty-five

1 (45) or more days prior to the election. *See* 42 U.S.C. § 1973ff-1(a)(8)(A). For the 2010
2 federal election cycle, the deadline to send out absentee ballots to military and overseas
3 voters who had timely requested an absentee ballot was September 18, 2010.

4 This lawsuit arose when Elko County, Nevada missed that September 18, 2010
5 deadline and sent out thirty-four (34) absentee ballots up to five days late, apparently due
6 to a printing error on the part of a private contractor. (*See* Griffin Aff., ECF No. 13-2;
7 Smith Aff., ECF No. 13-1.) Plaintiffs subsequently filed this lawsuit, requesting
8 injunctive relief to ensure that the military and overseas voters receiving these tardy
9 ballots will not be prejudiced by Elko County's failure to abide by the deadline set forth
10 in UOCAVA.

11 However, even before Plaintiffs filed this suit on October 8, 2010, Defendants
12 were aware of the issue and began working toward a solution that would ensure that the
13 affected voters would have the full statutorily required forty-five (45) days in which to
14 receive, complete, and return their ballots for the November 2010 election. (*See* Griffin
15 Aff., ECF No. 13-2.) In formulating this solution, the Secretary of State's Office worked
16 alongside the United States Department of Justice, (*see* Griffin Aff., ECF No. 13-2),
17 which is the entity tasked with enforcing UOCAVA. *See* 42 U.S.C. § 1973ff-4(a).

18 On October 6, 2010, Nevada Secretary of State Miller promulgated emergency
19 regulations requiring, *inter alia*, that the affected voters' ballots shall be counted for the
20 purposes of the November election as long as they are received by 5:00 p.m. on
21 November 8, 2010, which is six days after the November 2, 2010 date on which absentee
22 ballots would normally be due. (*See* Ex. 3, ECF No. 13-3.) On the same day that
23 Plaintiffs filed this lawsuit, the United States Department of Justice issued a press release
24 announcing the promulgation of these emergency regulations in which Thomas E. Perez,
25 Assistant Attorney General for the DOJ's Civil Rights Division, stated, "I am pleased that

1 Nevada officials worked quickly and cooperatively with the department and adopted
2 measures that will ensure the state's military and overseas voters will have their votes
3 counted in the upcoming elections.” (Ex. 4, ECF No. 13-4.)

4 The Clerk of Elko County, Winifred Smith, received a copy of the emergency
5 regulations promulgated by the Secretary of State and attests that as of October 25, 2010,
6 all but eight of the affected voters have already returned their ballots to Elko County.
7 (Smith Aff., ECF No. 13-1.)

8 **II. DISCUSSION**

9 A federal court may only decide cases over which it has jurisdiction. “Article III
10 of the United States Constitution limits federal court jurisdiction to ‘actual, ongoing cases
11 or controversies.’” *Wolfson v. Brammer*, 616 F.3d 1045, 1053 (9th Cir. 2010) (quoting
12 *Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 477 (1990)). A federal court may not “decide
13 moot questions or abstract propositions, because moot questions require no answer.” *Id.*
14 (quoting *North Carolina v. Rice*, 404 U.S. 244, 246 (1971)) (internal quotation marks
15 omitted). A case is moot “when the issues presented are no longer ‘live’ or the parties
16 lack a legally cognizable interest in the outcome.” *Porter v. Jones*, 319 F.3d 483, 489 (9th
17 Cir. 2003). Because mootness is a jurisdictional issue, the Court must consider it
18 independent of the parties’ arguments. *See Cammermeyer v. Perry*, 97 F.3d 1235, 1237
19 n.3 (9th Cir. 1996).

20 There is no live controversy in this case. Even before Plaintiffs filed this suit,
21 Defendants had already promulgated regulations approved by the DOJ to ensure that the
22 thirty-four (34) affected voters will have the full forty-five (45) days required by
23 UOCAVA in which to receive the absentee ballots, fill them out, and then return them.
24 (See Ex. 3, ECF No. 13.) Thus, the affected voters have already been protected against
25 the functional disenfranchisement about which Plaintiffs are concerned. Steps have

1 already been taken to ensure that the affected voters are not prejudiced by Elko County's
2 error. Therefore, based upon its independent consideration of the facts in this lawsuit, the
3 Court finds that the case is moot. Consequently, the Court may not hear it.

4 While there are exceptional circumstances under which a federal court may still hear
5 a case even if it is moot, such circumstances do not exist here. Specifically, a court may
6 hear an apparently moot case when two circumstances are simultaneously present: (1) the
7 alleged wrong is too short in its duration to be fully litigated prior to its cessation, and (2)
8 there is a reasonable expectation that the same complaining party will be subjected to the
9 same alleged wrong again. *Lewis*, 494 U.S. at 481. Here, there is no evidence that the
10 absentee ballots from Elko County destined for deployed voters will again be delayed by
11 several days due to an error on the part of the printer; this seems to have been an isolated
12 occurrence of administrative error which the Court has no reason to believe will occur
13 again. Therefore, the narrow exception to the mootness doctrine does not apply in this
14 case.

15 **CONCLUSION**

16 IT IS HEREBY ORDERED that Plaintiff's Complaint (ECF No. 1) is
17 DISMISSED.

18 IT IS FURTHER ORDERED that all pending motions are DENIED as moot.

19 DATED this 27th day of October, 2010.

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23 Gloria M. Navarro
24 United States District Judge
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